

EXHIBIT 2

108:03:12

UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

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MARK C. SCARSI, U.S. DISTRICT JUDGE

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NETLIST, INC.,)

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Plaintiff,)

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vs.)

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8:20-CV-993-MCS

SAMSUNG ELECTRONICS CO.,)

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LTD.,)

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Defendant.)

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REPORTER'S TRANSCRIPT OF JURY TRIAL

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VOLUME II

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Los Angeles, California

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Wednesday, May 15, 2024

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AMY DIAZ, RPR, CRR, FCRR
Federal Official Reporter
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111:43:56 A. That is correct.

211:43:57 Q. At any point in time, anywhere in this contemporaneous
311:44:03 document, did Samsung ever say the supply obligation was
411:44:07 limited to NVDIMM-P for the JDP?

511:44:11 A. No.

611:44:14 MR. SHEASBY: Pass the witness.

711:44:15 THE COURT: Any recross?

811:44:16 MR. SNYDER: Yes, Your Honor, just a couple of
911:44:19 questions.

1011:44:19 RECROSS-EXAMINATION

1111:44:21 BY MR. SNYDER:

1211:44:21 Q. Mr. Hong, you referred a few moments ago to a product
1311:44:24 called EMMC. Do you recall that?

1411:44:27 A. Yes.

1511:44:27 Q. EMMC was not used for an NVDIMM-P product, correct?

1611:44:35 A. That is incorrect. It is used for NVDIMM-P product.

1711:44:39 Q. EEMMC was not used for the jointly developed product
1811:44:44 under the JDLA, correct, sir?

1911:44:46 A. That is incorrect. It is specifically used for the joint
2011:44:50 develop product.

2111:44:51 Q. Netlist did not -- as I think you testified earlier
2211:44:55 today, Netlist did not produce -- Netlist and Samsung never
2311:45:01 got to the productization stage of the NVDIMM-P project,
2411:45:06 correct, sir?

2511:45:06 A. Sir, we had the product that we were showing Samsung.

114:14:05 be.

214:14:05 Q. Now, you said you had a call with Mr. Knuth where he told
314:14:10 you to come up with your best guess or just give you a name,
414:14:12 right?

514:14:12 A. Yes.

614:14:13 Q. And did you record the substance of that call in notes?

714:14:16 A. Yes, we did.

814:14:17 Q. Could you look at the document in front of you? This is
914:14:22 Exhibit IX13.

1014:14:24 A. Yes, I'm looking at it.

1114:14:25 Q. Are these the notes involving your conversation with
1214:14:30 Neal?

1314:14:30 A. Yes, it is. It's our weekly update call.

1414:14:35 MR. HARBOUR: Your Honor, I move to admit this
1514:14:37 exhibit into evidence.

1614:14:39 THE COURT: What's the exhibit number?

1714:14:40 MR. HARBOUR: It's IX13. This is not in the exhibit
1814:14:45 list, but I'm reintroducing it for purposes of rehabilitating
1914:14:51 the witness.

2014:14:51 THE COURT: What will be the exhibit number be in
2114:14:53 evidence? Do you have a number -- do you have a regular
2214:14:55 exhibit number?

2314:14:58 MR. HARBOUR: It will be Exhibit 999.

2414:15:01 THE COURT: 999. Okay.

2514:15:03 Any objection to 999 coming in evidence?

114:15:06 MR. FEINSTEIN: Your Honor, this wasn't on the
214:15:07 exhibit list. It wasn't disclosed to us. We object on that
314:15:10 ground.

414:15:11 THE COURT: Okay. Counsel, why wasn't this on the
514:15:13 exhibit list?

614:15:14 MR. HARBOUR: Well, this exhibit is being
714:15:15 introduced -- it was not an exhibit we were seeking to
814:15:18 introduce affirmatively. I'm bringing it up because they
914:15:22 attempted to impeach the witness on his cross-examination,
1014:15:24 and I would like to introduce this exhibit to rehabilitate
1114:15:28 the witness.

1214:15:28 So it was not an exhibit we were intending to bring
1314:15:31 up in our case in chief, it's just an exhibit that came up
1414:15:34 because of the line of questioning just introduced.

1514:15:36 THE COURT: Let me talk to the lawyers at side bar.

1614:15:38 (At the bench.)

1714:15:48 THE COURT: So counsel is indicating he's bringing
1814:15:51 this in to rehabilitate the witness. Do you have a response
1914:15:53 to that?

2014:15:54 MR. FEINSTEIN: This document wasn't on the exhibit
2114:15:56 list. And it's -- I'm not even aware it was produced in this
2214:16:01 litigation.

2314:16:01 MR. HARBOUR: I don't believe it was. And again,
2414:16:02 the only reason why I'm bringing this up is because they
2514:16:05 tried to impeach him, and he mentioned these meeting notes.

114:16:07 And I wanted to show that he did not make up these meeting
214:16:10 notes. He has documentary evidence on it.

314:16:12 THE COURT: It wasn't produced then, right?

414:16:13 MR. HARBOUR: It was not produced, no.

514:16:15 THE COURT: Why wouldn't it have been produced?

614:16:16 MR. HARBOUR: I don't know. I wasn't counsel at the
714:16:18 time. I don't know if it was responsive to a particular
814:16:21 request.

914:16:22 THE COURT: I can't see how it would not be
1014:16:25 responsive to a discovery response.

1114:16:28 First of all, it doesn't come it because it wasn't
1214:16:30 produced.

1314:16:30 And second of all, I've got a concern about why
1414:16:32 this -- why this wasn't produced. And so I would ask counsel
1514:16:35 to go back, dig into that, and let me know tomorrow why this
1614:16:42 wasn't produced.

1714:16:43 MR. HARBOUR: We can do that, Your Honor. I will
1814:16:45 say that counsel of record at the time is not counsel --

1914:16:47 THE COURT: I don't care who counsel of record was,
2014:16:50 and anything like that, but I do care if there was documents
2114:16:53 that you've got in your back pocket that haven't been
2214:16:56 produced that appear relevant. That seems to be a pretty big
2314:16:59 discovery violation to me. One that might merit sanctions.
2414:17:02 So I just want you -- before I go that far I want to hear a
2514:17:05 little bit more about it.

114:17:06 But this will not come in.

214:17:08 MR. HARBOUR: Thank you, Your Honor.

314:17:09 (In open court:)

414:17:09 BY MR. HARBOUR:

514:17:21 Q. Mr. Park, you also were asked -- or spoke with opposing

614:17:25 counsel about whether or not Netlist had ever told -- or

714:17:30 whether I think it was ever you personally, had ever told

814:17:33 Samsung that they were in breach of the agreement. And

914:17:36 counsel was very particular about the word choice, used the

1014:17:40 very specific word "breach." Do you recall that?

1114:17:41 A. Yes, I do.

1214:17:43 MR. HARBOUR: Could we pull up Exhibit 152, please?

1314:17:43 BY MR. HARBOUR:

1414:17:55 Q. This was a document that we looked at earlier, and I

1514:17:57 think you even opposing counsel showed you. Do you remember

1614:18:00 that?

1714:18:01 A. Yes.

1814:18:06 Q. And I want you to look at that second paragraph in this

1914:18:10 e-mail. This is an e-mail that was written by Paik Ki Hong.

2014:18:15 Do you recall that?

2114:18:15 A. Yes, I do.

2214:18:16 Q. And remind us who Paik Ki Hong was.

2314:18:18 A. He was our VP of operations and responsible for

2414:18:21 procurement.

2514:18:22 Q. And I believe this is the e-mail we discussed that he

114:27:27 A. Which terms? I'm sorry.

214:27:28 Q. The ones on the screen, joint development project and
314:27:31 developed product.

414:27:31 A. Oh, yes.

514:27:32 Q. Now, if Section 6.2, Samsung's supply obligation were
614:27:38 limited to the JDP or the developed product, would
714:27:42 Section 6.2, Samsung's supply obligation have had any value
814:27:49 to Netlist?

914:27:49 A. No, none whatsoever, because under this provision in
1014:27:53 Section 2.1, Samsung retained the right to cancel or suspend
1114:27:59 the joint development at any time and for any reason.

1214:28:01 Q. Were you involved in reviewing all of the drafts of the
1314:28:07 agreement that went back and forth between the parties before
1414:28:09 it was signed?

1514:28:10 A. Yes, I was.

1614:28:11 Q. Did any of the drafts of the agreement or any of the
1714:28:16 preceding documents, either from Samsung or Netlist, ever
1814:28:19 limit the supply clause to the joint development project or
1914:28:22 the developed product?

2014:28:25 A. No, that was never proposed.

2114:28:25 Q. So let's talk about what led to the final agreement.

2214:28:29 Prior to Netlist entering into the JDLA, were you
2314:28:33 involved in any presentations to Samsung regarding Netlist's
2414:28:38 patents?

2514:28:38 A. I was.

114:32:27 small company like Netlist.

214:32:29 There was some initial -- or some additional back
314:32:33 and forth to try to address that concern. We made at least
414:32:36 one proposal in that regard.

514:32:38 Ultimately, Samsung said that rather than make sort
614:32:42 of a large payment like that, they offered supply and
714:32:46 products instead.

814:32:47 Q. I'm going to pull up previously admitted Exhibit 101.

914:32:50 Do you recognize this document?

1014:32:51 A. I do.

1114:32:53 Q. What is it?

1214:32:53 A. This was the e-mail communicating that proposal from
1314:32:58 Samsung to us.

1414:32:58 Q. Did you see it at the time that it was sent?

1514:33:00 A. I did.

1614:33:01 Q. And what is the upshot of this e-mail?

1714:33:03 A. The upshot is, as I said, Samsung offered to supply NAND
1814:33:08 and DRAM, amongst other things. Samsung said that it would
1914:33:13 enable Netlist to grow its business, and it also said that it
2014:33:17 would enable us to envision our -- it would enable our vision
2114:33:23 of being a products company.

2214:33:24 Q. What was Netlist's reaction to Samsung's counter proposal
2314:33:28 to supply NAND and DRAM on Netlist's request in exchange for
2414:33:34 a license to its patents?

2514:33:35 A. We liked the idea. I mean, the idea or the commitment to

114:33:39 supply NAND and DRAM could be incredibly valuable to
214:33:43 Netlist's business.

314:33:44 For example, you know, in times of worldwide
414:33:47 shortage, having a committed supply of products could be
514:33:51 extremely valuable to the company. And particularly given
614:33:54 our history of trying to get supply from Samsung when they
714:33:56 had cut us off in the past and it had damaged our business,
814:34:00 having that commitment could be really valuable to us.

914:34:03 Q. Now, if Section 6.2, Samsung's supply obligation were
1014:34:06 limited to only the joint development project or the
1114:34:10 developed product, how if at all would that relate to the
1214:34:13 Samsung e-mail we are looking at the screen stating supply
1314:34:17 obligation would enable Netlist's vision of being a products
1414:34:19 company?

1514:34:20 A. I would have rendered this e-mail completely nonsensical,
1614:34:25 because if it had to have been tied to the joint development,
1714:34:30 they could have canceled that at any point for any reason and
1814:34:34 cut off that supply.

1914:34:35 Q. So you started with the \$85 million plus an ongoing
2014:34:41 royalty on Samsung's sales offer by Netlist and ultimately
2114:34:45 negotiated the final Section 6.2. What happened in the
2214:34:48 middle of all of that?

2314:34:48 A. Yeah, there was -- we negotiated for about six months. A
2414:34:52 lot of the terms changed, pretty typical in a negotiation
2514:34:58 like this, and particularly when dealing with a large foreign

115:11:29 other than to the extent someone translated them for you,
215:11:32 correct?

315:11:32 A. Correct.

415:11:37 MR. SNYDER: Now, could we bring up Exhibit 101,
515:11:39 please?

615:11:39 BY MR. SNYDER:

715:11:41 Q. You testified earlier about this e-mail from Mr. Kenny
815:11:46 Han.

915:11:48 Thank you, Dorian.

1015:11:52 Do you recall that, sir?

1115:11:53 A. I do.

1215:11:54 Q. This is previously admitted.

1315:11:56 A. I do.

1415:11:56 Q. And I believe that you pointed to this e-mail as the
1515:11:59 point at which Samsung proposed that it would include a broad
1615:12:04 supply agreement in an agreement with Netlist, correct?

1715:12:08 A. I don't know if this was the very first mention of
1815:12:14 supply, but, yes, it was a very clear suggestion of supply.

1915:12:18 Q. Now, you did not discuss with the jury during your
2015:12:21 testimony the actual term sheet that came with this e-mail,
2115:12:24 did you, sir?

2215:12:25 A. I mentioned it in passing.

2315:12:28 MR. SNYDER: Could we bring up exhibit -- admitted
2415:12:30 Exhibit 102?

2515:12:30 BY MR. SNYDER: